

**FINAL STATEMENT OF REASONS
FOR
PROPOSED BUILDING STANDARDS
OF THE
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (HCD)
REGARDING PROPOSED CHANGES TO THE
2001 CALIFORNIA BUILDING CODE (CBC)
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 2**

The Administrative Procedure Act requires that every agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding. The rulemaking file shall include a final statement of reasons. The Final Statement of Reasons shall be available to the public upon request when rulemaking action is being undertaken. The following are the reasons for proposing this particular rulemaking action:

UPDATES TO THE INITIAL STATEMENT OF REASONS

(Government Code Section 11346.9(a)(1) requires an update of the information contained in the initial statement of reasons. If the update identifies any data or any technical, theoretical or empirical study, report, or similar document on which the state agency is relying that was not identified in the initial statement of reasons, the state agency shall comply with Government Code Section 11347.1)

No data or any technical, theoretical or empirical study, report, or similar document on which the state agency is relying has been added to the rulemaking file that was not identified in the Initial Statement of Reasons.

During this rulemaking cycle legislative enactments necessitated revisions to the 2001 California Building Code. Senate Bill 1025 (Ch. 642, Stats. of 2003) revised Government Code Section 12955.1, and added Government Code Section 12955.1.1, regarding the definition of discrimination to include prescribed requirements relating to multistory dwelling units (townhouse-type) in buildings without an elevator that consist of at least four condominium dwelling units or at least three apartment dwelling units.

The enacted legislation included an operative date of July 1, 2005, and gave authority to the Department of Housing and Community Development (HCD) to adopt regulations necessary for the implementation of the new requirements.

The Department of Housing and Community Development (HCD) proposed the adoption of regulations through the emergency process for the most critically needed updates relative to the buildings HCD has the authority to regulate. The emergency regulations were initially approved by the Building Standards Commission on May 18, 2005 and subsequently re-approved on September 21, 2005. These regulations were published as a July 1, 2005 emergency supplement to the 2001 California Building Code.

HCD has made non-substantive, grammatical, or editorial language revisions to the following Sections to further clarify statute, provide clarity to the regulation, or correlate a jointly adopted regulation with the Division of the State Architect. Sections 1102A.3-C, 1105A.2.1 and 1107A.5 have been revised.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

(Pursuant to Government Code Section 11346.9(a)(2), if the determination as to whether the proposed action would impose a mandate, the agency shall state whether the mandate is reimbursable pursuant to Part 7 of Division 4. If the agency finds that the mandate is not reimbursable, it shall state the reasons for the finding(s).

The Department of Housing and Community Development (HCD) has determined that the proposed regulatory action WOULD NOT impose a mandate on local agencies or school districts.

OBJECTIONS OR RECOMMENDATIONS MADE REGARDING THE PROPOSED REGULATION(S)

(Government Code Section 11346.9(a)(3)) [List a summary of EACH objection or recommendation regarding the specific adoption, amendment, or repeal proposed, and explanation of how the proposed action was changed to accommodate each objection or recommendation, or the reasons for making no change. This requirement applies only to objections or recommendations specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the actions or reasons for making no change. Irrelevant or repetitive comments may be aggregated and summarized as a group].

The following is HCD's summary of and response to comments specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the actions or reasons for making no change:

COMMENTS 1-12 WERE RECEIVED DURING THE 45-DAY COMMENT PERIOD AND THE SUBSEQUENT 15 DAY COMMENT PERIOD.

COMMENTS RELATING TO SECTIONS 1102A.3-C AND 1105A.2.1 (EXEMPTION)

- 1. COMMENTER:** Patricia Yeager
California Foundation for Independent Living Centers

The commenter does not support the exemption of privately funded "Carriage Units" as defined in Section 1102A.3C from accessibility requirements in Sections 1105A.2.1 and 1107A.5 of HCD's Emergency Regulations as adopted by the CBSC in May 2005. The commenter stated that as per Senate Bill (SB) 1025, State regulations can be adopted and shall become effective if they provide to persons with disabilities, the same or greater protections than the federal standards, and therefore, should require 10% of all carriage units to meet accessibility requirements.

RESPONSE:

The Department of Housing and Community Development (HCD) has considered the comment regarding the exclusion of carriage units. A "carriage unit" is a specific type of dwelling unit that does not meet the definition of a "multistory dwelling unit" as set forth in Health and Safety Code 12955.1.1. The definition of "multistory dwelling unit" was added to the law by the Legislature as a result of the passage of SB 1025. Carriage units do not meet the definition of "multistory dwelling units" because a carriage unit is comprised of finished living space with two specific requirements: the finished living space is above grade and above the footprint of its private garage. In essence, it is a fully-contained vertical living and parking unit with all living spaces above grade level. On the other hand, a multistory dwelling unit is a condominium dwelling unit or rental apartment with finished living space on one floor at ground/grade level and the floor immediately above or below it or, if applicable, the floors immediately above and below it. Thus, carriage units are not the same as, nor included in, multistory units and therefore are not within the scope of these regulations.

The commenter makes reference to the ability of HCD to exceed "the federal regulations". However, SB 1025 provided specific direction as to the scope of its provisions. SB 1025, in and of itself, was intended to exceed federal regulations with respect to only one type of housing structure, rather than all of the Fair Housing Act requirements. Thus, it closes a loophole that existed in buildings with multistory dwelling units that do not have an elevator. The Housing Rights Center reports that some developers are using the loophole to build numerous in-fill developments at less expense, thereby closing off a growing source of affordable housing for persons with mobility impairments.

However, in closing this loophole, SB 1025 imposed requirements for multistory dwellings that are significantly less demanding. Only the ground floor and one bathroom of the unit must meet the federal and state disabled access standards, not the whole dwelling. Thus, the unit is "visitable" by persons with mobility impairments (i.e., they can gain access and get to a useable bathroom), although it would not be fully accessible in that other floors and other bathrooms would not be useable in this fashion. It is also important to note that the provisions in SB 1025 were not to be construed to require an elevator within an individual multistory dwelling unit, or within a building subject to the provisions of this bill.

2. COMMENTER: Wil Wong, AIA
KTTY Group, Inc.

The commenter states that the term "Carriage Unit" needs clarification, as to the definition of exactly what a carriage unit is, as some interpretations have included units over 2 or more private garages contained within the same footprint.

RESPONSE:

The Department of Housing and Community Development (HCD) has considered the comment regarding carriage units, however only non-substantive changes were made to the language currently proposed, for clarification purposes. These changes, reflected in the 15-day language submitted to the CBSC in November, are reprinted and attached for clarification. Furthermore, it is HCD's contention that the proposed building standards have met the intent of the legislature when they voted into law SB 1025 (Ch. 642, Stats. of 2003).

COMMENTER: Edward Pais
McDonald Architects

The commenter believes that a carriage unit should be allowed to have a common entrance into the U-1 private garage area and that the carriage unit should not be subject to the footprint size of the garage if built on a steep slope.

RESPONSE:

The Department of Housing and Community Development (HCD) has considered the comment regarding carriage units, however only non-substantive changes were made to the language currently proposed, for clarification purposes. These changes, reflected in the 15-day language submitted to the CBSC in November, are reprinted and attached for clarification. No changes were made to the footprint issue as this is in line with the federal definition. If a dwelling unit is built on a steep slope, regardless of footprint size, it most likely would not be a carriage unit and would be required to comply with other provisions of existing standards. Furthermore, it is HCD's contention that the proposed building standards have met the intent of the legislature when they voted into law SB 1025 (Ch. 642, Stats. of 2003).

COMMENTS RELATING TO SECTION 1105A.2.1 (2)

4. COMMENTER: Patricia Yeager
California Foundation for Independent Living Centers

The commenter stated that SB 1025, Chapter 642, clearly requires a useable bathroom on the primary entry floor of multistory buildings, served by an accessible route, and believes that including the term "powder room" when noting the types of rooms that may be included on the primary entry level, does not meet the intent of the bill, and should be struck from the Emergency Regulations.

RESPONSE:

The Department of Housing and Community Development (HCD) has considered the comments regarding requiring accessibility in either a powder room or a full bathroom, however, no changes were made to the language currently proposed. SB 1025 was intended to close a loophole that exempted accessibility requirements in buildings with multistory dwelling units that did not have an elevator. SB 1025 achieved that goal by adding "multistory dwelling units" to the class of units that require special features, but did not require that all features in "covered multifamily buildings" be imposed on the multistory dwelling units (otherwise, the Legislature merely would have defined "covered multifamily buildings" to include multistory dwelling units).

The Fair Housing Act and Fair Employment and Housing Act statutory standards for covered multifamily buildings require an accessible "bathroom" be provided on the primary entry level. The implementing federal and state regulations interpret this to require that either a powder room (commonly known as a half-bathroom) or a bathroom be provided on the primary entry level. Specifically, the Fair Housing

Amendments Act Guidelines requires that either a powder room or bathroom be provided in multistory dwelling units in buildings with elevators. A powder room is a specific type of bathroom.

Generally, in closing the [California](#) loophole, SB 1025 imposed requirements for multistory dwellings that are significantly less demanding. Only the ground floor and one bathroom of the unit must meet certain disabled access standards, not the whole dwelling. In the case of the "bathroom" identified in SB 1025, HCD determined that it should be interpreted in the same manner as "bathroom" is interpreted in the more stringent [federal and state](#) accessibility standards, allowing either a full bathroom or a powder room. Thus, the unit is "visitable" by persons with mobility impairments (i.e., they can gain access and get to a useable bathroom or powder room), although it would not be fully accessible in that other floors and other bathrooms would not be useable in this fashion.

Additionally, the change in law [enacted by SB 1025](#) did not address other rooms that may be located on the primary entry level. However, in an effort to make the new requirements for [multistory dwelling units](#) in buildings without an elevator consistent with the existing requirements for buildings with an elevator, all rooms located on the primary entry level must comply with the accessibility standards.

5. COMMENTER: Cindy Casselman
Mayfair Homes Inc.

The commenter believes that in a multistory dwelling unit (townhouse-type) where a powder room on the primary entry level is required to be accessible, that no other living areas on the primary entry level are addressed by SB 1025.

RESPONSE:

The Department of Housing and Community Development (HCD) has considered these comments regarding powder rooms, however, no changes were made to the language currently proposed. Powder room is a specific type of bathroom that is currently allowed in the existing accessibility provisions for multistory dwelling units in buildings with elevators. Additionally, the change in law did not address other rooms that may be required to be located on the primary entry level. Furthermore, it is HCD's contention that the proposed building standards have met the intent of the legislature when they voted into law SB 1025 (Ch. 642, Stats. of 2003).

Additionally, only the ground floor and one bathroom of the unit would need to meet the above standards, not the whole dwelling. Thus, the unit would be "visitable" by persons with mobility impairments (i.e., they can gain access and get to a useable bathroom), although it would not be fully accessible in that other floors and other bathrooms would not be useable.

6. COMMENTER: John Paul Scott, AIA
Create Access – Architects/Consultants

The commenter believes that an adaptable, full bathroom should be required for 10% of the total number of units on the primary entry floor of multistory dwelling units, served by an accessible route, and that a powder room should not be allowed as a useable bathroom as in Section 1105A.2.1.

RESPONSE:

The Department of Housing and Community Development (HCD) has considered these comments regarding powder rooms, however, no changes were made to the language currently proposed. Powder room is a specific type of bathroom that is currently allowed in the existing accessibility provisions for multistory dwelling units in buildings with elevators. Additionally, the change in law did not address other rooms that may be required to be located on the primary entry level. Furthermore, it is HCD's contention that the proposed building standards have met the intent of the legislature when they voted into law SB 1025 (Ch. 642, Stats. of 2003).

COMMENTS RELATING TO SECTIONS 1105A.2.1 AND 1107A.5

- 7. COMMENTER:** Renner Johnston, AIA LEED
Magavero Notestine Associates

The commenter believes that the intent of SB 1025 was to eliminate the multistory dwelling unit, (townhouse-type) exception from CBC 1107A.5 and to make 10% of all new multistory dwelling units accessible on the ground floor, and agrees with this language. However, the commenter believes there is a conflict when townhouse-type dwelling units are above an accessible flat, ground floor apartment and is accessed by an exterior staircase. The commenter believes this type of construction would require all the townhouses to be accessible on the primary entry level, even when serviced by separate entrances.

RESPONSE: Comment - No. 7

The Department of Housing and Community Development (HCD) has considered the comments regarding multistory dwelling units (townhouse-type), and only non-substantive changes were made to the language currently proposed, for clarification purposes. A multistory dwelling unit above a flat may be required to comply with the provisions of SB 1025, however, SB 1025 made it clear that the legislature did not intend to require an elevator. Furthermore, it is HCD's contention that the proposed building standards have met the intent of the legislature when they voted into law SB 1025 (Ch. 642, Stats. of 2003).

COMMENTS RELATING TO SECTION 1107A.5

- 8. COMMENTER:** Kirk Miya P.E.
Willdan Group of Companies

The commenter believes there is a conflict between HCD's proposed regulations for Section 1107A.5 and the Fair Housing Act concerning ground floors above grade. The commenter believes that a single story dwelling above a carriage unit should be exempt from the requirements of a multistory dwelling unit.

RESPONSE: Comment - No. 8

The Department of Housing and Community Development (HCD) has considered the comments regarding floors above grade, and only non-substantive changes were made to the language currently proposed, for clarification purposes. Additionally, single story units above a carriage unit are currently exempt and no language was added to the regulations to change the status. Furthermore, it is HCD's contention that the proposed building standards have met the intent of the legislature when they voted into law SB 1025 (Ch. 642, Stats. of 2003).

COMMENTS IN SUPPORT OF SECTION 1105A.2.1

- 9. COMMENTER:** Michael Pyatok
Pyatok Architects

The commenter supports HCD's emergency regulations and stated that a "powder room" on the primary entry level of a multi-story dwelling unit, in a non-elevator building, should be the minimum requirement for an accessible bathroom. The use of a powder room to meet accessibility requirements in multistory dwelling units would keep construction costs down, and would provide more affordable housing.

- 10. COMMENTER:** Michael Pyatok
Pyatok Architects

The commenter supports HCD's emergency regulations as adopted by the California Building Standards Commission (CBSC) in May 2005, in which Carriage Units should remain exempt from accessibility requirements to provide more affordable housing. It is important to note that the provisions of SB 1025 apply to rental apartments and condominiums; the bill does not mention type of ownership (i.e. fee simple)

11. COMMENTER: Wil Wong, AIA
KTTY Group, Inc.

The commenter supports HCD's emergency regulations requiring only an accessible powder room on the primary entry level of multistory dwelling units, (townhouse-type) in a non-elevator building. It is important to note that the provisions of SB 1025 apply to rental apartments and condominiums; the bill does not mention type of ownership (i.e. fee simple)

12. COMMENTER: Bob Raymer, P.E.
California Building Industry Association

The commenter supports the permanent adoption of all of the Emergency Regulations submitted by HCD and approved by the CBSC in May, 2005, and believes the regulations are consistent with the language and the intent of SB 1025 [Ch. 642, 2003 Stats].

RESPONSE: Comment – Nos. 9 through 12

The Department of Housing and Community Development (HCD) acknowledges these comments in support of its rulemaking regarding multistory dwelling units (townhouse-type). No further action is necessary.

Attachment: (15-Day Language)

**CHAPTER 11A
HOUSING ACCESSIBILITY**

SECTION 1102A [FOR HCD 1/AC] — DEFINITIONS

1102A.3-C

CARRIAGE UNIT. *A dwelling unit with living space on one or more floors immediately above a Group U, Division 1, private garage or garages which serves only that unit. The footprint of the garage or garages is used as the footprint for the remaining floor or floors of the dwelling units above and the garage level contains no habitable space.*

NOTE: *Dwelling units located over a common garage shall not be considered carriage units.*

Recommendation: Clarify the meaning of garage and the use of the garage.

Rationale: The revised text clarifies that the floor area of a carriage unit may extend over the footprint of a private garage used or assigned to another carriage unit in the building as long as the footprint of the carriage unit is within the footprint of the garage or garages.

1105A.2 [FOR HCD 1/AC] Multistory Dwellings.

1105A.2.1 [FOR HCD 1/AC] Multistory Apartment or Condominium Dwellings in Buildings with No Elevator. *This section shall apply to multistory dwelling units on the ground floor of buildings without elevators for which an application for a construction permit is submitted on or after July 1, 2005.*

EXCEPTION: *Carriage units as defined in Section 1102A.3-C and regulated only by the Department of Housing and Community Development as referenced in Section 101.17.9.1.*

A minimum *At least ten percent, but not less than one of the multistory dwelling units in apartment buildings with 3 or more dwelling units or condominiums with 4 or more dwelling units, located in buildings without an elevator, shall comply with the following:*

1. *The primary entry to the dwelling unit shall be on an accessible route unless exempted by site impracticality tests in Section 1119A.*

2. At least one powder room or bathroom shall be located on the primary entry level served by an accessible route and shall comply with the provisions of Section 1109A.
3. All rooms or spaces located on the primary entry level shall be served by an accessible route and shall comply with the provisions in this chapter. Rooms and spaces located on the primary entry level and subject to this chapter may include but are not limited to kitchens, powder rooms, bathrooms, living rooms, bedrooms, or hallways.
4. Common use areas covered by this section shall be accessible as required by this chapter. Public use areas as defined in Chapter 2, Chapter 11A, and Chapter 11B of this code are subject to provisions of the Division of the State Architect (DSA/AC) and are referenced in Section 101.17.11.

The minimum number of multifamily dwelling units which must comply with this section shall be calculated using the total number of all multistory dwelling units in buildings on a site which are subject to this section. Any fraction thereof shall be rounded to the next highest whole number.

Recommendation: Clarify the type of multistory dwellings covered by this section.

Rationale: The added text clarifies the intent of law. Senate Bill 1025 amended the definition of discrimination contained in Government Code Section 12955.1 regarding "multistory dwelling units in buildings without an elevator that consist of at least four condominium dwelling units or at least three rental apartment dwelling units". This revision provides specificity needed by the user to properly identify which types of multistory dwellings are covered by this section.

Recommendation: Replace "A minimum" with "at least."

Rationale: The revised text is more consistent with model code text format.

Recommendation: Remove the text "located in buildings without an elevator".

Rationale: The removed text was duplicative and added confusion to the section. The Section heading clarifies that this section only applies to buildings without an elevator.

Recommendation: Add specific text to inform users that common use areas serving units covered by this section must also comply with the access provisions of Chapter 11A.

Rationale: The added text clarifies the intent of law. Senate Bill 1025 amended Government Code Section 12955.1 and required access to specific types of multistory dwellings. In addition to access provisions for the dwelling units themselves, the public and common use areas serving those units are required to be accessible and usable. This revision draws attention to common use and public use areas serving these types of dwellings.

1107A.5 [For HCD 1/AC] Ground Floors Above Grade. *When the first floor containing one or more covered dwelling units is a floor above grade, all units must be served by an accessible route.*

EXCEPTION: ~~In multistory dwelling units, i.e., townhouse-type construction, access is not required for buildings without elevators. In multistory dwelling units in buildings with elevators, the story of the unit that is served by the building elevator is the primary entry to the unit. The primary floor shall contain a bathroom or powder room usable to a person in a wheelchair.~~ Carriage units as defined in Section 1102A.3-C and regulated **only** by the Department of Housing and Community Development as referenced in Section 1101A.17.9.1.

Multistory dwellings units shall comply with Section 1105A.2.

Recommendation: Add the word "only".

Rationale: The Department of Housing and Community Development (HCD) has worked closely with the Division of the State Architect during the development of these regulations. To provide further clarity and delineate the separation between privately funded and publicly funded projects which can have substantially different access requirements. The word “only” has been added to further specify the application of the exception for carriage units.

Authority: Section 17921, Health and Safety Code; and Section 12955.1, Government Code. Reference: Sections 12955.1 and 12955.1.1, Government Code.